UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

RODNEY BARBER,	)	
	)	
Plaintiff,	)	
	)	C.A. No. 05-390-L
v.	)	
	)	
VERIZON NEW ENGLAND INC.	)	
	)	
Defendant.	)	

DEFENDANT'S OBJECTION TO PLAINTIFF'S MOTION TO AMEND COMPLAINT

I. INTRODUCTION

Plaintiff seeks to amend his Complaint to rename as defendants two employees of Verizon, Lorna Deplitch and Joseph Conway (the "Individuals"), who have previously been dismissed from this action. Renaming the Individuals as defendants does nothing to advance the Plaintiff's case and would unnecessarily complicate a factually simple, garden variety employment dispute. Moreover, Plaintiff's counsel's motive in naming the Individuals is simply to give him the opportunity to propound written discovery on them, as well as Verizon. This is not a reasonable basis for naming them as Defendants. Therefore, Defendant Verizon New England Inc. ("Verizon") objects to Plaintiff Rodney Barber's Motion to Amend Complaint.

II. ARGUMENT

Plaintiff's original Complaint brought three counts against Verizon and the Individuals alleging disability discrimination in violation of the Rhode Island Civil Rights Act ("RICRA"), the Fair Employment Practices Act ("FEPA"), and for Vicarious Liability/Respondent (sic) Superior against Verizon based on the actions of the Individuals acting within the scope of their employment. The Individuals moved to dismiss the claims and the Court granted the Individuals' motion in a Memorandum and Order dated December 19, 2005. The Court specifically found that Plaintiff could not bring a FEPA claim against the Individuals because he had failed to name them in his administrative charge. The Court also found, "(t)he absence of any reference to Deplitch or Conway in the allegations under RICRA is fatal to plaintiff's claim." (Memorandum and Order, p. 7.)

Plaintiff's purported reason for attempting to amend the Complaint now is that, "additional facts needed to be included showing the discriminatory actions that Lorna Deplitch and Joseph Conway III took or did not take towards the plaintiff." (Plaintiff's Memorandum in Support of Motion to Amend Complaint, p. 2.) Despite this statement, Plaintiff alleges no new facts whatsoever. Rather, Plaintiff seeks to correct the deficiency which led to the dismissal of the RICRA count by amending paragraph 23 of the Complaint in completely conclusory fashion. Paragraph 23 currently reads, "(t)he actions of Verizon, as aforesaid have denied Barber . . ." Plaintiff seeks to amend this language to allege, "(t)he actions of Verizon, *Deplitch, Conway*, as aforesaid have denied Barber . . ." (emphasis added). Otherwise, Plaintiff's original Complaint and his proposed Amended Complaint are identical.

While Verizon recognizes that leave to amend shall be freely granted, "(t)he liberal amendment policy prescribed . . . does not mean that leave will be granted in all cases." Acosta-Mestre v. Hilton Intern. of Puerto Rico, 156 F.3d 49, 51 (1st Cir. 1998). The First Circuit has also explained that, "(t)he denial of [a motion to amend] will be upheld so long as the record evinces an arguably adequate basis for the court decision (e.g., futility, bad faith, undue delay, or a dilatory motive on the movant's party)." Hatch v. Dep't. For Children, Youth and Their Families, 274 F.3d 12, 19 (1st Cir. 2001). Here, more than an adequate basis exists for denying Plaintiff's motion.

First, Plaintiff's only reason for trying to bring in the Individuals as Defendants in this case is to allow him to propound written discovery on them. This is prejudicial to Verizon and is not a valid basis for amending the Complaint. Undue prejudice has been found in cases where the amendment, "'brings entirely new and separate claims, adds new parties, or at least entails more than an alternative claim or a change in the allegations of the complaint' and *where the amendment would require expensive and time-consuming additional discovery.*" Chicago Typographical Union No. 16 v. Chicago Tribune Co., 1987 U.S. Dist. LEXIS 2152 (D. Ill. 1987)(emphasis added)(quoting Lanigan v. LaSalle National Bank, 108 F.R.D. 660, 662 (N.D. Ill. 1985).

Plaintiff has already served Verizon with Interrogatories and Document Requests, many of which are patently overbroad. Examples of interrogatories Plaintiff has served on Verizon include the following:

> 5. For the years 1998 to present, please state the following for each person employed by Verizon who was not in work for illness reasons and was then discovered not to be home sick: (a) Whether the person disciplined was disabled; (b) Whether the person disciplined was male or female; (c) The dates of the disciplinary action; (d) The reason for the action; (e) The title and name of the person who administered the action; (f) Whether the action was in writing or verbal; (g) Whether this was the first warning, and if not, what number warning was it; (h) What type of disciplinary action was taken.
>
> 6. For all complaints of any type of discrimination, before or after the one here sued upon, in which Verizon was involved in, please state as to each occurrence. (a) The dates and places of each incident; (b) The names and addresses of the person or persons involved in each such incident, separately stated as to each incident (include the offender(s) and victims involved; (c) A brief description of each such incident; (d) Any internal investigations that were conducted as to each incident and its (e) What type of controls were put in place so that such an incident would not occur in the future; (f) Whether the complaint was written or verbal; and (g) The present status of

each lawsuit or proceeding, or if concluded, the final result of each lawsuit or proceeding, and any monetary, judgment, settlement or award.

8. For the years 1995 to present, please state the following for each disabled employee who was employed by Verizon at the same position and/or building in which Plaintiff worked: (a) His/her name, address, telephone number, and time period when he/she was employed by Verizon; (b) The disability of each person; (c) What position they held at Verizon; (d) How many disciplinary actions were taken against them, if any; (e) Was the action verbal or written; (f) What was the reason for the action; (g) What was the outcome of the action; and (h) Are they still associated with Verizon, and if not, why not.

Given that counsel were unable to agree on a limitation to the written discovery propounded on the Individuals to induce Plaintiff to withdraw his motion, there is no reason to believe that Plaintiff will not serve similarly overbroad discovery on the Individuals. Again, this is a garden variety employment dispute between Plaintiff and his current employer. By allowing Plaintiff the opportunity to name the Individuals as Defendants, it is more likely than not that both Verizon's and the Court's time will be consumed by needless and protracted discovery motion practice. For this reason alone, Plaintiff's motion is both dilatory and futile, and should be denied.

Second, granting Plaintiff leave to amend will not in any way advance his case. Indeed, Plaintiff alleges no new facts to support amending his Complaint, merely one conclusory allegation that the Individuals, along with Verizon, denied Barber "the same rights to make and enforce contracts on the basis of his disability . . ." (Complaint ¶ 23). Except for that, the original and proposed Amended Complaint are identical. See Varney v. R.J. Reynolds Tobacco Company, 118 F. Supp. 2d 63, 67 (D. Mass. 2000) ("'bald assertions' and unsupported conclusions do not qualify as 'well-pleaded' facts, and are of no assistance to a plaintiff in defeating a motion to dismiss" for failure to state a claim upon which relief may be granted).

Putting aside the legal inadequacies, on a practical level, Plaintiff does not help himself by seeking to add the Individuals. Plaintiff has sued his current employer, Verizon. In the highly unlikely event Plaintiff obtains any recovery, it will be against Verizon, not the Individuals. There has been no allegation by Plaintiff that the Individuals were acting outside the scope of their employment when dealing with Plaintiff. To the contrary, Plaintiff's Complaint alleges that the individuals acted within the scope of their employment. (Complaint, ¶ 32). Indeed, Verizon's counsel is also the Individuals' counsel and the interests of both Verizon and the Individuals are aligned. Therefore, the Individuals are not necessary and adding them as defendants would be an exercise in redundancy.

Finally, Plaintiff states that he should be allowed to bring claims pursuant to Count III Vicarious Liability/Respondent (sic) Superior against the Individuals. However, Plaintiff's proposed Amended Complaint is identical to his original Complaint with respect to Count III. Moreover, as the Individuals previously argued in their Motion to Dismiss, a count for vicarious liability, by definition, only applies to Verizon. Therefore, there is no reason for the Court to revisit its dismissal of Count III.

III. CONCLUSION

For the foregoing reasons, and for the reasons in the Individuals' previously filed Motion to Dismiss, Verizon respectfully requests that the Court deny Plaintiff leave to amend his Complaint.

VERIZON NEW ENGLAND INC.,

By Their Attorneys,

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the 3rd day of February, 2006, I caused a true copy of the within Objection to be served by first class mail, postage prepaid, to the following counsel of record:

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